DEPARTMENT OF STATE REVENUE

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Supplemental Letter of Findings Number: 07-0596
Sales and Use Tax
For the Tax Period 2007

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ISSUES

I. Sales and Use Tax–Imposition.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-5-; IC § 6-6-6.5-8(d); 45 IAC 2.2-5-15; Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003).

The Taxpayer protests the assessment of use tax on an airplane.

STATEMENT OF FACTS

The Taxpayer is a limited liability company that operated two airplanes as a charter service and purchased another airplane in 2006. The Taxpayer did not pay sales tax on the 2006 purchase. The Taxpayer applied for the public transportation exemption from the sales and use tax. The Indiana Department of Revenue, hereinafter referred to as the "Department," denied the exemption and assessed Indiana use tax, interest, and penalty on the airplane. The Taxpayer protested the assessment of use tax and penalty. A hearing was held. A Letter of Findings denying the Taxpayer's protest was issued on July 17, 2008. The Taxpayer requested a rehearing to argue that it qualified for the use tax rental exemption from the use tax. A rehearing was granted and this Supplemental Letter of Findings results.

I. Sales and Use Tax–Imposition.

DISCUSSION

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. Id. Exemption statutes are to be strictly construed against the Taxpayer. Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003).

IC § 6-6-6.5-8(d) provides for the payment of sales or use tax on an airplane as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

(1) The time the aircraft is registered; or

(2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.

The Taxpayer bases its claim for exemption on the following provisions of IC § 6-2.5-5-8 which states in relevant part:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

....

The law concerning the exemption for rental to others is further explained at 45 IAC 2.2-5-15 as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

The Taxpayer argued that at the time of application to the Department it did not have the FAA Certificate because of unforeseen circumstances outside of their control. At the time of purchase of the subject aircraft, the Taxpayer's other planes were flying under the FAA 135 Certificate of another out-of-state company. Due to changes in the federal regulations and requirements concerning operational control of airplanes flying with FAA Part 135 certification, the out-of-state company was unable to add the Taxpayer's new aircraft to the FAA 135 Certificate of the out-of-state company. Therefore, the Taxpayer searched for another company with an active FAA 135 Certificate to purchase. The Taxpayer found such a company in a third state. The Taxpayer formed a related limited liability corporation to purchase the out-of-state company with the FAA 135 Certificate. The Taxpayer leases the airplane to the related company which lists the subject airplane on its FAA 135 certificate. The related company then operates the plane to operate an air charter service. The Taxpayer submitted substantial documentation indicating that it actually rents the airplane to the related company.

Therefore, the Taxpayer properly claimed the purchase for leasing exemption pursuant to IC § 6-2.5-5-8.

FINDING

The Taxpayer's protest to the assessment of use tax on its airplane is sustained.

Posted: 11/26/2008 by Legislative Services Agency

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